

No. 4357

United States
Circuit Court of Appeals
For the Ninth Circuit.

R. A. AITON,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the District of Arizona.

FILED

OCT 16 1924

F. D. MONCKTON,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Affidavit of George E. Warner.....	37
Affidavit of John H. Easterwood ..	39
Affidavit of R. A. Aiton.....	19
Appearance Bond on Writ of Error.....	51
Arraignment	14
Assignment of Errors.....	41
Bill of Exceptions.....	59
Certificate of Clerk U. S. District Court to Transcript of Record.....	75
Citation on Writ of Error.....	74
Demurrer	15
 EXHIBITS:	
Exhibit "A" Attached to Motion for New Trial—Affidavit of George Warner...	30
Indictment	1
Instructions Offered by Defendant.....	23
Judgment	48
Minutes of Court—April 16, 1923—Arrai- gment	14
Minutes of Court—October 24, 1923—Order Overruling Demurrer	17

Index.	Page
Minutes of Court—January 14, 1924—Order Overruling Amended Demurrer.....	22
Minutes of Court—February 16, 1924—Judg- ment	48
Minutes of Court—February 16, 1924—Order Denying Motion for New Trial and Motion to Arrest Judgment.....	47
Minutes of Court—February 21, 1924—Order Extending Time to File Bill of Exceptions	54
Minutes of Court—March 1, 1924—Order Ex- tending Time to and Including March 18, 1924, to File Bill of Exceptions.....	55
Minutes of Court—March 17, 1924—Order Ex- tending Time to File Bill of Exceptions...	56
Minutes of Court—March 21, 1924—Order Ex- tending Time to File Bill of Exceptions...	57
Minutes of Court—March 29, 1924—Order Ex- tending Time to File Bill of Exceptions...	58
Minutes of Court—May 28, 1924—Order Set- tling and Allowing Bill of Exceptions.....	66
Minutes of Court—July 11, 1924—Order Ex- onerating Sureties on Supersedeas Bond..	67
Minutes of Court—July 11, 1924—Order Re Supersedeas Bond	66
Motion for New Trial.....	29
Motion to Arrest Judgment.....	34
Motion to Suppress Evidence.....	18
Names and Addresses of Attorneys of Record..	1
Order Denying Motion for New Trial and Mo- tion to Arrest Judgment.....	47
Order Denying Motion to Suppress Evidence..	21

Index.	Page
Order Exonerating Sureties on Supersedeas Bond	67
Order Extending Time to File Bill of Exceptions (February 21, 1924).....	54
Order Extending Time to and Including March 18, 1924, to File Bill of Exceptions.....	55
Order Extending Time to File Bill of Exceptions (March 17, 1924).....	56
Order Extending Time to File Bill of Exceptions (March 21, 1924).....	57
Order Extending Time to File Bill of Exceptions (March 29, 1924).....	58
Order for Writ of Error and Bond on Appeal	49
Order Overruling Amended Demurrer.....	22
Order Overruling Demurrer.....	17
Order Re Supersedeas Bond.....	66
Order Settling and Allowing Bill of Exceptions	66
Petition for Writ of Error.....	40
Points and Authorities in Support of Motion for New Trial.....	33
Praecipe for Papers and Record on Writ of Error to United States Circuit Court of Appeals	68
Resistance to Motion for New Trial and Motion to Arrest Judgment.....	36
Return on Writ of Error.....	73
Verdict	28
Writ of Error.....	71

NAMES AND ADDRESSES OF ATTORNEYS OF
RECORD.

BENTON DICK, Phoenix, Arizona,
Attorney for Plaintiff in Error.

FREDERICK H. BERNARD, United States At-
torney, Phoenix Ariz., GEORGE T. WILSON,
Assistant United States Attorney, Phoenix,
Ariz.,
Attorneys for Defendant in Error.

C.-1462—PHOENIX.

United States of America,
District of Arizona,—ss.

In the District Court of the United States in and
for the District of Arizona, at the April Term
Thereof, A. D. 1922.

INDICTMENT.

Viol. Sec. 1, Act of Dec. 17, 1914, as amended by Act
of Feb. 24, 1919, issuing prescriptions for mor-
phine and cocaine not in good faith and in the
course of his professional practice only.

The Grand Jurors of the United States, im-
paneled, sworn, and charged at the term aforesaid,
of the Court aforesaid, on their oath present, that R.
A. Aiton, whose true and full name is to the Grand
Jurors unknown, who was then and there a practic-
ing physician within the said District and Jurisdic-
tion aforesaid, and duly registered with the Collector

of Internal Revenue for the District of Arizona as a physician under the provisions of the Act of Congress of December 17, 1914, as amended, on the 18th day of October, A. D. 1921, and within the said District of Arizona, did then and there unlawfully, wilfully, knowingly and feloniously and contrary to the Act of Congress aforesaid, issue and write and deliver a prescription to one George Warner for a quantity of morphine sulphate, to wit: Fifty-six grains of morphine sulphate, not in good faith for meeting the immediate needs of the said George Warner, not to effect a cure of the said George Warner in the course of his professional practice only, the said George Warner being then and there an habitual user of and addicted to the use of such narcotic drugs, nor to treat the said George Warner then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drugs for the purpose of catering to and satisfying the cravings of said George Warner for such drug; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said George Warner, to whom the said prescription was written and delivered, in the unlawful and felonious manner as set forth above, was then and there the user of, and addicted [1*] to the use of, such narcotic drug; contrary to the form of

*Page-number appearing at foot of page of original certified Transcript of Record.

the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit: on the 14th day of November, A. D. 1921, and within the District of Arizona, R. A. Aiton, whose true and full name is to the Grand Jurors unknown, who was then and there a practicing physician within the said District and Jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona as a physician under the provisions of the Act of Congress of December 17, 1914, as amended, did unlawfully, wilfully, knowingly and feloniously and contrary to the act of Congress aforesaid, issue and write and deliver a prescription to one Herman Dunn for a quantity of morphine sulphate to wit: fifty-six grains of morphine sulphate, not in good faith for meeting the immediate needs of the said Herman Dunn, not to effect a cure of the said Herman Dunn in the course of his professional practice only, said Herman Dunn being then and there an habitual user of and addicted to the use of such narcotic drugs, nor to treat the said Herman Dunn then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drug for the purpose of catering to and satisfying the cravings of the said Herman Dunn for such

drug; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said Herman Dunn, to whom the said prescription was written and delivered, in the unlawful and felonious manner as set forth above, was then and there the user of, and addicted to the use of, such narcotic drug; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [2]

THIRD COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit: on the 25th day of January, A. D. 1922, and within the District of Arizona, R. A. Aiton, whose true and full name is to the Grand Jurors unknown, who was then and there a practicing physician within the said District and Jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona as a physician under the provisions of the Act of Congress of December 17, 1914, as amended, did unlawfully, wilfully, knowingly and feloniously and contrary to the Act of Congress aforesaid, issue and write and deliver a prescription to one Camille Flynn for a quantity of morphine sulphate, to wit: forty-two grains of morphine sulphate, not in good faith for meeting the immediate needs of the said Camille Flynn, not to effect a cure of the said Camille Flynn in the course of his professional practice only, the said

Camille Flynn being then and there an habitual user of and addicted to the use of such narcotic drug, nor to treat the said Camille Flynn then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drug for the purpose of catering to and satisfying the cravings of the said Camille Flynn for such drug; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said Camille Flynn, to whom the said prescription was written and delivered, in the unlawful and felonious manner as set forth above, was then and there the user of, and addicted to the use of, such narcotic drug; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid do further present that heretofore, to wit: on the 3d day of February, A. D. 1922, and within the District of Arizona, R. A. Aiton whose true and full name is to the Grand Jurors unknown, who was [3] then and there a practicing physician within the said District and Jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona as a physician under the provisions of the Act of Congress of De-

ember 17, 1914, as amended, did unlawfully, wilfully, knowingly and feloniously and contrary to the Act of Congress aforesaid, issue and write and deliver a prescription to one Oliver Flynn for a quantity of morphine sulphate, to wit: forty-two grains of morphine sulphate, not in good faith for meeting the immediate needs of the said Oliver Flynn, not to effect a cure of the said Oliver Flynn in the course of his professional practice only, the said Oliver Flynn being then and there an habitual user of and addicted to the use of such narcotic drug, nor to treat the said Oliver Flynn then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drug for the purpose of catering to and satisfying the cravings of the said Oliver Flynn for such drug; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said Oliver Flynn, to whom the said prescription was written and delivered, in the unlawful and felonious manner as set forth above, was then and there the user of, and addicted to the use of, such narcotic drug; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit:

on the 7th day of February, A. D. 1922, and within the District of Arizona, R. A. Aiton, whose true and full name is to the Grand Jurors unknown, who was then and there a practicing physician within the said District and jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona as a physician under the provisions of the Act of Congress of December 17, 1914, as amended, [4] did wilfully, unlawfully, knowingly and feloniously and contrary to the Act of Congress aforesaid, issue and write and deliver a prescription to one George Walling for a quantity of morphine sulphate, to wit: fifty-six grains of morphine sulphate, not in good faith for meeting the immediate needs of the said George Walling, not to effect a cure of the said George Walling in the course of his professional practice only, the said George Walling being then and there an habitual user of and addicted to the use of such narcotic drug, nor to treat the said George Walling then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drug for the purpose of catering to and satisfying the cravings of the said George Walling for such drug; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said George Walling, to whom the said prescription was written and delivered, in the unlawful and

felonious manner as set forth above, was then and there the user of, and addicted to the use of, such narcotic drug; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SIXTH COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit: on the 9th day of February, A. D. 1922, and within the District of Arizona, R. A. Aiton, whose true and full name is to the Grand Jurors unknown, who was then and there a practicing physician within the District and jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona as a physician under the provisions of the Act of Congress of December 17, 1914, as amended, did wilfully, unlawfully, knowingly and feloniously and contrary to the Act of Congress aforesaid, issue and write and deliver a prescription to one Van McGehan for a quantity of morphine sulphate, to wit: fifty-six grains of morphine sulphate, not in good faith for meeting the immediate needs of the said Van McGehan, not to [5] effect a cure of the said Van McGehan in the course of his professional practice only, the said Van McGehan being then and there an habitual user of and addicted to the use of such narcotic drug, nor to treat the said Van McGehan then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drug for the purpose of catering to

and satisfying the cravings of the said Van McGehan for such drugs; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said Van McGehan, to whom the said prescription was written and delivered, in the unlawful and felonious manner as set forth above, was then and there the user of, and addicted to the use of, such narcotic drug; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SEVENTH COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit: on the 27th day of January, A. D. 1922, and within the District of Arizona, R. A. Aiton, whose true and full name is to the Grand Jurors unknown, who was then and there a practicing physician within the said District and Jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona as a physician under the provisions of the Act of Congress of December 17, 1914, as amended, did wilfully, unlawfully, knowingly and feloniously and contrary to the Act of Congress aforesaid, issue and write and deliver a prescription to one Roy Mason for a quantity of morphine sulphate, to wit: fifty-six grains of morphine sulphate, not in good faith for meeting the immediate needs of the said Roy Mason, not to effect a cure of the said Roy Mason in the course of his professional practice only,

the said Roy Mason being then and there an habitual user of and addicted to the use of such narcotic drug; nor to treat the said Roy Mason then and there suffering from an incurable or chronic [6] disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drug for the purpose of catering to and satisfying the cravings of the said Roy Mason for such drug; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said Roy Mason, to whom the said prescription was written and delivered, in the unlawful and felonious manner as set forth above, was then and there the user of, and addicted to the use of, such narcotic drug; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

EIGHTH COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit: on the 17th day of November, A. D. 1921, and within the District of Arizona, R. A. Aiton, whose true and full name is to the Grand Jurors unknown, who was then and there a practicing physician within the said District and Jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona as a physician under the

provisions of the Act of Congress of December 17, 1914, as amended, did wilfully, unlawfully, knowingly and feloniously and contrary to the Act of Congress aforesaid, issue and write and deliver a prescription to one Harold Franklin for a quantity of morphine sulphate, to wit: one hundred and twelve grains of morphine sulphate, not in good faith for meeting the immediate needs of the said Harold Franklin, not to effect a cure of the said Harold Franklin in the course of his professional practice only, the said Harold Franklin being then and there an habitual user of and addicted to the use of such narcotic drug, nor to treat the said Harold Franklin then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter and sell such narcotic drug for the purpose of catering to and satisfying the cravings of the said Harold Franklin for such drugs; and your Grand Jurors allege [7] that morphine sulphate, as the said R. A. Aiton then and there well knew, is a compound, preparation and derivative of opium; and your Grand Jurors further say that the said Harold Franklin, to whom the said prescription was written and delivered, in the unlawful and felonious manner set forth above, was then and there the user of, and addicted to the use of, such narcotic drug; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

NINTH COUNT.

And your Grand Jurors aforesaid, upon their oath aforesaid do further present that heretofore, to wit: on the 8th day of February, A. D. 1922, and within the District of Arizona, R. A. Aiton, whose true and full name is to the Grand Jurors unknown, who was then and there a practicing physician within the said District and Jurisdiction aforesaid, and duly registered with the Collector of Internal Revenue for the District of Arizona, as a physician under the provisions of the Act of Congress of December 17, 1914, as amended, did wilfully, unlawfully, knowingly and feloniously and contrary to the act of Congress aforesaid, issue and write and deliver a prescription to one George P. Simpson for a quantity of morphine sulphate, to wit: fifty-six grains of morphine sulphate, and to other divers and sundry persons whose names the Grand Jurors are not able here to set forth, prescriptions for quantities of morphine sulphate and cocaine hydrochloride, not in good faith for meeting the immediate needs of the said George P. Simpson and the said divers and sundry persons aforesaid, not to effect a cure of any such person in the course of his professional practice only, the said George Simpson and the said other persons being then and there habitual users of and addicted to the use of such narcotic drugs, nor to treat such persons then and there suffering from an incurable or chronic disease in the course of his professional practice only, but, on the contrary, with the intent and purpose to dispense, distribute, barter, sell, exchange and give

away such narcotic drugs for the purpose of catering to and satisfying the cravings of such persons for such drugs; and your Grand Jurors allege that morphine sulphate, as the said R. A. Aiton then and there [8] well knew, is a compound, preparation and derivative of opium, and that, to the knowledge of the said R. A. Aiton, cocaine hydrochloride, is a derivative and preparation of cocoa leaves; and your Grand Jurors further say that the said George P. Simpson, to whom the said prescription was written and delivered, and the said divers and sundry persons aforesaid, to whom the said prescriptions were written and delivered; in the unlawful and felonious manner as set forth above, were then and there the users of, and addicted to the use of, such narcotic drugs; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FREDERIC H. BERNARD,

United States Attorney for the District of Arizona.

[9]

[Endorsed on back]: C.-1462 (Phoenix). In the United States District Court for the District of Arizona. United States of America vs. R. A. Aiton. Indictment. A True Bill. Jas. H. McClintock, Foreman of the Grand Jury.

Witnesses examined before the Grand Jury:

Will. S. Woods,	Harold Franklin,
J. H. Fleming,	James H. Heckman,
Camille Flynn,	F. P. Barnes,
Oliver Flynn,	Orville H. Brown,
V. M. McGehan,	R. W. Craig,
Geo. Walling,	A. M. Tuthill.
G. E. Goodrich,	

Presented to the Court in the presence of the Grand Jury by their foreman, and filed this 12th day of May, A. D. 1922. C. R. McFall, Clerk. [10]

Regular April Term, 1923, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Monday, April 16, 1923.)

No. C. -1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—APRIL 16, 1923—AR-
RAIGNMENT.

The defendant, R. A. Aiton, is present in person and with his counsel, H. J. Sullivan, Esquire. The

United States Attorney for the District of Arizona is present for the Government.

The said defendant is duly arraigned before the bar of this court on the indictment returned against him, charging him with having issued prescriptions for morphine and cocaine not in good faith and in the course of his professional practice only.

On being called upon to plead thereto, said defendant states he is not guilty as charged in the indictment, which plea of not guilty is ordered entered.

WHEREUPON IT IS ORDERED that this case be set for trial May 7th, 1923. [11]

In the United States District Court, District of
Arizona.

No. C. -1462 (PHOENIX).

UNITED STATES OF AMERICA

vs.

R. A. AITON.

DEMURRER.

R. A. Aiton, defendant herein, demurs to the indictment herein, and for grounds of demurrer alleges:

I.

That the facts stated do not constitute a public offense.

II.

R. A. Aiton, defendant herein, demurs to the first

count of the indictment herein, and for grounds of demurrer alleges: that said first count in said indictment contained does not state facts constituting a public offense.

III.

R. A. Aiton, defendant herein, demurs separately and severally to the second, third, fourth, fifth, sixth, seventh, eighth and ninth counts in the alleged indictment contained and for grounds of demurrer alleges; that the facts alleged in said separate counts in said indictment do not constitute a public offense.

WHEREFORE, defendant prays that his demurrer be sustained.

WELDON J. BAILEY,
Attorney for Defendant.

[Endorsed]: Demurrer. Filed Oct. 24, 1923.
C. R. McFall, Clerk. By Chas. H. Adams, Deputy
Clerk. [12]

Regular October, 1923, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minutes Entry of Wednesday, October 24, 1923.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—OCTOBER 24, 1923—
ORDER OVERRULING DEMURRER.

The defendant, R. A. Aiton, is present in person with his counsel, W. J. Bailey, Esq.

Defendant's demurrer to the indictment herein is now heard.

IT IS THEREUPON ORDERED that said demurrer as to each count of the indictment is hereby overruled; defendant's exception to said ruling is allowed.

IT IS FURTHER ORDERED that this case is reset for trial on October 29th, 1923. [13]

In the United States District Court in the District
of Arizona.

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

MOTION TO SUPPRESS EVIDENCE.

Counsel for defendant, R. A. Aiton, move this Honorable Court to make an order directing and ordering the United States District Attorney not to use any of the prescriptions alleged to have been written by this defendant and now in the possession of the United States District Attorney and the United States of America; and that he further be directed and ordered not to use any knowledge gained by his seizure and possession of said prescriptions in the prosecution of this cause; and that he be further directed and ordered not to use any prescription or any knowledge gained therefrom and alleged to have been written by this defendant in the prosecution of this cause for the reasons set out in the affidavit attached hereto and in support hereof.

That the seizure and detention of said prescriptions is in violation of the fourth and fifth amendments to the constitution of the United States and for that reason said prescriptions should be returned

and all evidence gained from said prescriptions should be suppressed.

WHEREFORE, defendant prays that his motion be granted.

WELDON J. BAILEY,
F. J. DUFFY,

Attorneys for Defendant.

AUTHORITIES:

Gouled vs. United States, 65 U. S. L. Ed. 647.

[14]

No. C.—1462 (PHOENIX).

AFFIDAVIT OF R. A. AITON.

State of Arizona,
County of Maricopa,—ss.

R. A. Aiton, being first duly sworn, deposes and says:

That he is the defendant in cause No. C.—1462 (Phoenix), which is the United States of America vs. R. A. Aiton; that prior to and at the time of this indictment this defendant was the duly licensed and practicing physician within the State of Arizona and duly registered with the Collector of Internal Revenue for the State of Arizona, as a physician under the provisions of the Act of Congress of December 17, 1914, as amended; that ever since the findings of said indictment this defendant has been, and now is, a duly licensed physician under and by virtue of the laws of the State of Arizona and residing in Phoenix, Arizona; that affiant is informed and verily believes and upon such informa-

tion and belief, says; that the United States District Attorney or certain officers of the United States of America, to him unknown, seized the sealed package in which certain prescriptions written by this defendant, were, and affiant says that said prescriptions are the identical prescriptions mentioned in the indictment aforesaid; that said prescriptions were taken by the aforesaid officers or officer from the druggist and out of the store of the druggist who filled said prescriptions and returned and sealed said prescriptions as provided by law; that said prescriptions were seized and are held by and at the instance of the United States of America and to the prejudice of this defendant because said prescriptions are of great value to this defendant and if introduced [15] in evidence in the trial of the cause now pending will seriously prejudice this defendant and will in fact compel the defendant to give evidence against himself; that affiant is informed and believes that the Government of the United States in the prosecution of this cause intends to use or attempt to use said written prescriptions seized and held, as aforesaid; that the seizure and detention of said prescriptions by the United States Government and its officers was and is unlawful and in violation of the constitutional rights of this defendant and prejudicial to his interest.

R. A. AITON.

Subscribed and sworn to before me this 30th day of October, 1923.

[Notarial Seal] WELDON J. BAILEY,
Notary Public.

My commission expires Sept. 1st, 1924.

[Endorsed]: Affidavit. Motion. Filed Oct. 30, 1923. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. [16]

Regular October, 1923, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Thursday, January 10, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

ORDER DENYING MOTION TO SUPPRESS
EVIDENCE.

Defendant's motion to suppress evidence is now heard,—

WHEREUPON, IT IS ORDERED that said motion to suppress evidence be and the same is

hereby DENIED; Exception is ordered noted for the defendant. [17]

August 20, 1924.

The records of the U. S. District Court do not show that an amended demurrer was ever filed of record, and the same is not on file with this Court.

C. R. McFALL,
Clerk.

By Paul Dickason,
Chief Deputy Clerk. [18]

Regular October, 1923, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Monday, January 14th, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—JANUARY 14, 1924—
ORDER OVERRULING AMENDED DE-
MURRER.

Defendant's amended demurrer is now heard and

the same is hereby ORDERED overruled. An exception is ordered entered for the defendant. [19]

In the District Court of the United States, District
of Arizona.

No. C.—1462 (PHOENIX).

THE UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

INSTRUCTIONS OFFERED BY DEFEND-
ANT.

I.

You are instructed that taking all of the facts and evidence submitted to you in this case, if you have a reasonable doubt in your mind of the guilt of this defendant of the crime charged in the counts of this indictment, you must acquit him of the crime charged.

II.

You are instructed that the prescriptions written by this defendant prior to the 8th day of February, 1922, and which prescriptions are introduced in evidence were and are to be submitted to you in the consideration of this case, are not in and of themselves evidence of the guilt of this defendant.

III.

You are instructed that the writing of these prescriptions does not constitute a violation of the

Harrison Narcotic Act. If they were written in good faith and with the intent to relieve disease, and it does not matter of the amount of morphine prescribed is if it was not prescribed and given with the willful *in-* [20] intent to knowingly violate the provisions of the Harrison Anti-Narcotic Act.

IV.

You are instructed that if you do not find beyond a reasonable doubt that the defendant wrote these prescriptions with a willful intent to violate the provisions of the Harrison Narcotic Act, he is not guilty of the crime charged in this indictment.

V.

You are instructed that if the defendant wrote these prescriptions and prescribed for the persons named in the indictment in this case in the honest belief that they were suffering from incurable or chronic diseases and that the said morphine was prescribed for the relief of the said incurable or chronic diseases, then you must find that the defendant was prescribing morphine in the course of his professional duties and is not guilty of the crime charged.

VI.

You are instructed that if upon all the facts in this case you find that the defendant honestly believed that the giving of morphine to the persons named in the indictment was necessary to stop the progress of the incurable or chronic disease they were suffering from, even though in fact he made a mistake in writing said prescriptions, your verdict must be for an acquittal.

VII.

You are instructed that if you find that the prescriptions written by this defendant prior to February 8, 1922, and which [21] are in evidence in this case, were written for the sole purpose of enabling the defendant of this case to keep his patients in such a condition as to enable him to treat the chronic or incurable disease from which the said patients were, in his opinion suffering from, then you must find that these prescriptions are prescribed within the meaning of the Harrison Narcotic Act, and are not evidence of any crime on the part of this defendant.

VIII.

You are instructed that a reputable physician, duly in charge of *bona fide* patients, suffering from diseases known to be incurable, such as cancer, advanced tuberculosis, and many other diseases, may, in the course of his professional practice and strictly for legitimate medical purposes, dispense or prescribe narcotic drugs for such diseases, providing the patients are personally attended by the physician; that he regulate the dosage and prescribe no quantity greater than that ordinarily recognized by members of his profession to be sufficient for the proper treatment of the given case.

You are further instructed that if you find upon all the facts in this case that this defendant prescribed the prescriptions in evidence in this case for the purpose as stated above, you must find him not guilty of a violation of the Harrison Narcotic Act.

IX.

You are instructed that if upon all the facts in this case you find that any one of the persons named in this indictment was a drug addict, but was also suffering from any incurable disease or suffering from senility or the infirmities [22] attending old age, and are confirmed addicts of years standing, such addicts may be treated in the same manner as addicts suffering from incurable disease and the giving of morphine to such does not constitute a violation of the Harrison Narcotic Act.

XI.

You are instructed that an order issued by a practicing and registered physician for morphine to a habitual user thereof, the order being issued by him in the course of his professional treatment in an attempted cure of the habit and not for the sole purpose of providing the user with morphine sufficient to keep him comfortable, is a prescription within the meaning of Section 2 of the Harrison Narcotic Act. You are further charged that if upon all the facts you find that the prescriptions written by this defendant were issued for the above purpose then the issuance of said prescriptions does not constitute a violation of the Harrison Narcotic Act.

XII.

You are instructed that the prescriptions written after the date of the indictment upon which this defendant is being tried, are submitted to you for the sole purpose of and upon the sole issue of impeachment, if any there be, of a material part of

the defendant's testimony. You are further charged that the said impeachment, if any there be, must be of a material part of the indictment. You are further charged that if you find that there is no impeachment of any material part of the defendant's testimony then the said prescriptions written after the date of the indictment have no bearing upon the case *and* [23] and are not to be considered by you in deciding the facts in this case.

XIII.

You are instructed that the prescriptions written after date of this indictment are not evidence of the crime charged in the indictment and are not to be considered by you as being any part of the evidence upon which you are to base your findings of fact on this indictment.

XIV.

You are instructed that the intent of this defendant at the time these prescriptions in evidence that were issued before Feb. 8, 1922, were written is a fact to be decided by you upon all of the evidence.

XV.

You are further charged that if you should find upon all the facts in this case that this defendant intended at the time these prescriptions were written to give the said prescriptions for the relief or the treatment of a chronic or incurable disease then you must find that the defendant issued the said prescriptions in the course of his professional practice and within the provisions of the Harrison Narcotic Act.

XVI.

You are further instructed that if you find that at the time the prescriptions which are introduced in evidence in this case, were written by this defendant, he wrote them in the course of his professional practice in the attempted cure of a chronic or incurable, even though the persons were also known to him to be morphine addicts, then the amount prescribed and the number of doses is immaterial.

Above instructions refused, being covered by instructions given by the Court.

F. C. JACOBS,

Judge.

[Endorsed]: Filed Jan. 24, 1924. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. [24]

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

Against

R. A. AITON,

Defendant.

VERDICT.

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant Guilty as charged in the first counts of the indictment, and Not Guilty as charged in the

second, fifth and eighth counts of the indictment.
With recommendation for mercy.

C. W. LILLYWHITE,
Foreman.

[Endorsed]: Verdict. Filed Jan. 24, 1924.
C. R. McFall, Clerk. By Paul Dickason, Chief
Deputy Clerk. [25]

In the District Court of the United States, District
of Arizona.

No. C.—1462 (PHOENIX).

THE UNITED STATES OF AMERICA

vs.

ROBERT A. AITON,

Defendant.

MOTION FOR NEW TRIAL.

The defendant, Robert A. Aiton, moves this Honorable Court to vacate the verdict rendered against him in the above-entitled matter and grant unto him a new trial upon the following grounds:

I.

That the persistent cross-examination and examination of the witnesses for the defendant by the Judge of this Honorable Court resulted in prejudicing the jury against this defendant and prejudicing the rights of this defendant.

II.

That the Court committed error in the admission

of certain documents and other evidence over the objection of the defendant and to his prejudice.

III.

That the Court committed error in excluding certain evidence material to the defendant.

IV.

That the verdict of the jury is contrary to law and is not supported by the evidence.

V.

That the verdict of the jury is predicated upon perjured evidence, as shown by the affidavit of George Warner, marked Exhibit "A," attached hereto and made a part hereof.

WHEREFORE, defendant prays that his motion for new trial be granted.

WELDON J. BAILEY.

WIN WYLIE.

F. J. DUFFY.

C. H. YOUNG. [26]

EXHIBIT "A."

State of Arizona,
County of Maricopa,—ss.

George Warner, being first duly sworn, deposes and says:

That he is the identical person who testified in cause No. C.—1462 (Phoenix), entitled "The United States of America vs. R. A. Aiton," and that he is the identical person mentioned in the first count of the indictment in cause No. C.—1462 (Phoenix).

That in the year 1921 and prior to July 1st of

said year affiant applied to Dr. Harry R. Carson of Phoenix, Arizona, for medical treatment and Doctor Carson examined this affiant and diagnosed his case to be chronic syphilis and tuberculosis and prescribed morphine and other drugs for same; that in July, 1921, affiant applied to Doctor R. A. Aiton, for medical treatment and Doctor Aiton diagnosed affiant's disease to be that of chronic syphilis and tuberculosis and prescribed morphine and other medicines for him; that when affiant applied to Doctor Aiton he was sick, weak and in a very bad condition and was much lighter in weight at that time than now; that when he applied to Doctor Aiton he believed that he had syphilis and he still believes that he has syphilis and believes that a blood test will disclose chronic syphilis; that he further believes that Doctor Aiton administered morphine to this affiant in good faith and so administered the same for the purpose of meeting his physical needs and to quiet his pain and to sustain his body.

That after leaving Phoenix this affiant went to Los Angeles where he was treated by Doctor Rogers and the said doctor found that affiant had chronic syphilis and treated him for such disease and gave him eight or nine shots.

That affiant well knew Mr. Barnes, the narcotic inspector residing in Phoenix, Arizona, and visited his house many times and borrowed his car ten or fifteen times and talked with him upon many occasions and was at all times very friendly with him.

Affiant still believes that Doctor Aiton prescribed morphine to him in good faith and affiant knows that he needed such prescriptions to ease his pain and sustain his body.

That affiant in 1921 and subsequent thereto had severe ulcers upon his arm and three doctors said that such ulcers were caused from the syphilitic condition of this affiant and affiant verily believes that said ulcers were caused because of the syphilis which he had.

GEORGE WARNER.

Sworn to and subscribed before me this 28th day of January, 1924.

[Notarial Seal] WELDON J. BAILEY,
Notary Public.

My commission expires Sept. 1, 1924.

[Endorsed]: Motion for New Trial. Filed Jan. 23, 1924. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. [28]

In the United States District Court, District of
Arizona.

No. C.—1462 (PHOENIX).

THE UNITED STATES OF AMERICA,

vs.

R. A. AITON,

Defendant.

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR NEW TRIAL.

It is within the sound discretion of this Court to grant a new trial.

The Court is without authority to arbitrarily refuse to grant a new trial.

Defendant is entitled to be convicted, if at all, upon definite, unwaivering, unsuspecting and truthful evidence.

The jury might have convicted upon George Warner's testimony only; the defendant is also entitled to the benefit of the doubt.

Three trial jurors made oath that they would not have convicted had it not been for the evidence and presence of George Warner; one juror could have prevented a conviction.

George Warner made oath, in writing, and during the trial of the Batchelder case, in substance to the effect that his material testimony, given at the trial of this defendant, was false.

George Warner should not be believed, and a verdict predicated upon his testimony should not stand.

The verdict of the jury in this case is predicated solely upon the perjured testimony of George Warner; no conviction [29] could have been had without the concurrence of the three trial jurors, making the three affidavits on file herein and these jurors say, under oath, that they would not have voted for

a conviction if it had not been for the testimony and presence of George Warner.

Pettine vs. Territory of New Mexico, 201 Fed. 489.

U. S. vs. Radford et al., 131 Fed. 378.

Bussen vs. State, 64 S. W. 268.

WELDON J. BAILEY,

WIN WYLIE,

F. J. DUFFY,

C. H. YOUNG,

Attorneys for Defendant.

[Endorsed]: Points and Authorities. Filed Feb. 12, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk.

Also: Feb. 12, 1924. H. M. VanDenburgh, for the U. S. Attorney. [30]

In the United States District Court, District of
Arizona.

No. C.—1462 (PHOENIX).

THE UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

MOTION TO ARREST JUDGMENT.

Defendant, R. A. Aiton, by his attorneys Weldon J. Bailey, Win Wylie, Frank J. Duffy, and Chas. H. Young, moves the Court to arrest the judg-

ment on the verdict herein and to discharge defendant, and assigns as reasons therefor that the act approved December 17, 1914, as amended by the act approved February 24, 1919, was and is repealed by the act of Congress approved November 23, 1921, to become effective January 1st, 1922, by Section 1400, Title XIV, General Provisions of the Revenue Act.

(42 U. S. Statutes at Large, Section 1400, Pages 320-321.)

WELDON J. BAILEY,
WIN WYLIE,
FRANK J. DUFFY,
CHAS. H. YOUNG,
Attorneys for Defendant.

POINTS AND AUTHORITIES.

42 United States Statutes at Large, Section 1400, Pages 320-321.

United States vs. Goodwin, 20 Fed. 237.

[Endorsed]: Motion to Arrest Judgment. Filed Feb. 13, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk.

Received copy of the within this 13th day of February, 1924.

F. H. BERNARD. [31]

In the District Court of the United States for the
District of Arizona.

PX. 1462—C.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT A. AITON,
Defendant.

RESISTANCE TO MOTION FOR NEW TRIAL
AND MOTION TO ARREST JUDGMENT.

Comes now the plaintiff, the United States of America, by Frederick H. Bernard, United States Attorney for the District of Arizona, by George T. Wilson, Assistant United States Attorney for the District of Arizona, and resisting defendant's motion for a new trial and defendant's motion to arrest judgment, submits to the Court the affidavit of George E. Warner, hereunto attached, marked Exhibit "A," here referred to and made a part of this resistance to said motions as though fully set forth herein.

FREDERIC H. BERNARD,
United States Attorney for the District of Arizona.

GEORGE T. WILSON,
Assistant United States Attorney for the District of Arizona. [32]

In the District Court of the United States for the
District of Arizona.

C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT A. AITON,

Defendant.

AFFIDAVIT OF GEORGE E. WARNER.

United States of America,
District of Arizona,—ss.

I, George E. Warner, being first duly sworn, depose and say:

That I am the same George Warner mentioned and described in that certain affidavit signed by me on the 28th day of January, 1924, and attached to the motion for a new trial filed by defendant in the above-entitled action; that at the time I signed said affidavit I was incarcerated in the county jail of Maricopa County, Arizona, together with a number of other prisoners; that on said day I was lying in my bunk in my cell in said jail and was approached by another prisoner and handed an affidavit by him with the request that I sign same. I read said affidavit and at the request of said prisoner attached my signature to it. Thereupon said prisoner took said affidavit and left my presence. A few minutes later one Weldon J. Bailey, attorney for the de-

fendant in the above-entitled action, came up to the bars of my cell and asked me if I had signed said affidavit, and if that was my signature attached thereto, to which I responded that I had signed same and that said signature was mine; at the time I signed said affidavit no oath was administered to me by any one, nor was any oath administered to me as to the truth of the matters contained in said affidavit thereafter, and I have never sworn to said affidavit, or to any part thereof, and would not swear to said affidavit, because certain matters contained therein are not true.

That I make this affidavit voluntarily and of my own, free [33] will and do so for the purpose of correcting any impression that may get abroad to the effect that I have sworn to said purported affidavit attached to said motion for a new trial.

GEORGE E. WARNER.

Subscribed and sworn to before me this 1st day of February, A. D. 1924.

[Notarial Seal] EVAN S. STALLCUP,
Notary Public, Maricopa County, Arizona.

My commission expires Dec. 7, 1927.

[Endorsed]: Filed Feb. 15, 1924. C. R. McFall,
Clerk, U. S. District Court, District of Arizona.
By Paul Dickason, Chief Deputy. [34]

AFFIDAVIT OF JOHN H. EASTERWOOD.

State of Arizona,
County of Maricopa,—ss.

John H. Easterwood, being first duly sworn, deposes and says:

That on the 28th day of January, 1924, and at the time George Warner subscribed a certain affidavit, this affiant was detained by the United States of America in the county jail of Maricopa County, and that in my presence and in the presence of Weldon J. Bailey, George Warner was sworn respecting the facts stated in said affidavit and after making oath that same were true he then subscribed said affidavit and immediately thereafter was requested to go into the presence of another witness where he stated that he did execute the affidavit and that the matters and things stated in said affidavit were true.

JOHN H. EASTERWOOD.

Subscribed and sworn to before me this 16th day of February, 1924.

[Notarial Seal] **WELDON J. BAILEY,**
Notary Public.

My commission expires Sept. 1, 1925.

[Endorsed]: Affidavits. Filed Feb. 16, 1924.
C. R. McFall, Clerk. By Chas. H. Adams, Deputy
Clerk. [35]

In the District Court of the United States, District
of Arizona.

C.—1462 (PHOENIX).

THE UNITED STATES OF AMERICA,

vs.

R. A. AITON,

Defendant.

PETITION FOR WRIT OF ERROR.

Now comes R. A. Aiton, defendant herein, by his attorneys, and says that on the 16th day of February, 1924, the Court entered judgment herein against this defendant, in which judgment and proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of this defendant, all of which will more fully appear from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in this behalf out of the United States Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Circuit Court of Appeals aforesaid.

WELDON J. BAILEY,

WIN WYLIE,

FRANK J. DUFFY,

C. H. YOUNG,

Attorneys for Defendant.

[Endorsed]: Petition for Writ of Error. Filed Feb. 16, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk. [36]

In the District Court of the United States, District of Arizona.

No. C.—1462 (PHOENIX).

THE UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

ASSIGNMENT OF ERRORS.

Now comes R. A. Aiton, the defendant in the above-entitled cause, by his attorneys, in connection with petition for writ of error herein, and makes the following assignment of errors, which he alleges occurred during the trial of said cause:

I.

The trial court erred in overruling the defendant's demurrer to the prescriptions seized by the United States narcotic agent without due process of law, in violation of Article IV of the constitution of the United States, which said prescriptions were used by the United States District Attorney before the grand jury in forming the indictment in this case.

II.

The trial court erred in overruling the defendant's motion to suppress evidence in the form of prescriptions which prescriptions were seized in an

illegal manner by the United States narcotic agent and used before the grand jury by the United States District Attorney in violation of Article V of the constitution of the United States, which provides that no man shall be compelled in any criminal case to be a witness against himself.

III.

The trial court erred in admitting incompetent evidence to the prejudice of the defendant in that the trial court allowed the prescriptions seized by the United States narcotic [37] agent in an illegal manner to be introduced in evidence against the defendant in that said prescriptions were seized in an illegal manner, contrary to the provisions of Article IV of the constitution of the United States, which provides that no evidence may be used against a defendant which were unlawfully seized.

IV.

The trial court erred in admitting incompetent evidence to this defendant's prejudice, in that the trial court admitted in evidence certain prescriptions signed by the defendant which prescriptions were illegally seized by the United States officers and which prescriptions in effect compelled the defendant to testify against himself, contrary to the provisions of Article V of the constitution of the United States.

V.

The trial court erred in admitting incompetent evidence to this defendant's prejudice, in that the trial court admitted in evidence certain prescriptions bearing date two months after the indictment

under which this defendant was tried, in that such prescriptions were admitted to show the intent of the defendant in the acts set forth in the indictment.

VI.

The trial court erred in admitting incompetent evidence to this defendant's prejudice, in that the trial court admitted in evidence certain prescriptions bearing date two months after the indictment and which said prescriptions were admitted in evidence by the Court not for the purpose of contradicting a material part of the evidence introduced on the issuance raised on the indictment in this case.

VII.

The trial court erred in that the trial court framed questions for the District Attorney to ask the defendant's [38] witnesses when the questions asked by the District Attorney had been objected to and the objection sustained, in that said conduct on the part of the trial court prejudiced the jury against the defendant in this cause.

VIII.

The trial court erred in refusing to admit material evidence in that the Court ruled out evidence of the so-called clinic under which clinic the defendant was issuing prescriptions at the time of the indictment.

IX.

The trial court erred in that the trial court without any objection to the evidence being raised by the counsel for the government or for the defendant, stopped a witness who was testifying to material

facts in the case, in that Doctor Carson, a witness for the defendant, in answer to a question by the defendant's attorney, was testifying as to the creation and maintenance of a certain clinic for the care and treatment of certain drug addicts, who were suffering from chronic or incurable diseases, thereby creating prejudice against this defendant before the jury not warranted by the evidence then before them.

X.

The trial court erred in refusing to give the following instruction:

“You are instructed that a reputable physician duly in charge of *bona fide* patients suffering from diseases known to be incurable, such as cancer, advanced tuberculosis and many other diseases, may, in the course of his professional practice and strictly for legitimate medical purposes, dispense or prescribe narcotics for such diseases, providing the patients are personally attended by the physician; that he regulates the dosage and that he prescribe no quantity greater than that usually given by members of his profession and known to be sufficient for the purpose. [39]

You are further instructed that if you find upon all the facts stated above that the defendant prescribed narcotics as stated, you must find him not guilty of a violation of the Harrison Narcotic Act.”

XI.

The trial court erred in excluding evidence of-

ferred by the defendant, which evidence was in effect as follows:

That a certain clinic had been created under the supervision of the Collector of Internal Revenue for this district and certain other officials who formed a clinic for the purpose of treating certain habitual users of morphine and who were also suffering from some chronic or incurable disease, in that such evidence was a material part of the case in that it had a direct bearing upon the intent of this defendant in filling out prescriptions upon which the indictment in this case was founded.

XII.

The trial court erred in ruling upon the question of law before the jury that all evidence of what narcotic agents did or said in regard to the prescriptions at the time they were inspected after their issuance by the defendant in this case was immaterial and not a part of the case, in that the said conversations were material to the case for the purpose of showing the intent of the defendant in issuing said prescriptions.

XIII.

The trial court erred in ruling out evidence to the prejudice of the defendant in that the trial court ruled as a matter of law that the wrappers placed on the bundles of prescriptions inspected by the narcotic agents, which said prescriptions and wrappers formed a part of the prescriptions filed required to be kept by the provisions of the Harrison Narcotic Act were material evidence of the intent and good [40] faith of the defendant in filling

the said prescriptions under the indictment which charged him with willfully, knowingly and feloniously filling illegal orders for narcotics.

XIV.

The trial court erred in that to the prejudice of the defendant in this case, he, during the course of the trial, ruled as followed:

“that the law laid down by the Supreme Court of the United States in the cases of U. S. vs. Webb and U. S. vs. Moy was the law of this case and that the law of these two cases would be applied to the facts in this case.”

That said statement was made before all the facts in this case were before the Court and at a time when it was impossible for the trial court to know what the facts in this case were and that said ruling had the effect of prejudicing the jury against this defendant in that it created a prejudice in the minds of the jury against this defendant, not founded on the facts in the case.

XV.

The trial court erred in overruling the motion for new trial on the part of the defendant for the reason that the evidence of George Warner, named in the count upon which the defendant was found guilty, was found by the Court to be perjured evidence.

WELDON J. BAILEY.

WIN WYLIE.

F. J. DUFFY.

C. H. YOUNG.

[Endorsed]: Assignment of Errors. Filed Feb. 16, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk. [41]

Regular October, 1923, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Saturday, February 16, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—FEBRUARY 16, 1924—
ORDER DENYING MOTION FOR NEW
TRIAL AND MOTION TO ARREST JUDG-
MENT.

The defendant, R. A. Aiton, is present in person and by counsel, W. J. Bailey, F. J. Duffy, and C. H. Young, Esquires. The United States is represented by Geo. T. Wilson, Assistant United States Attorney.

Hearing is now had on defendant's motion for a new trial, whereupon, IT IS ORDERED that the said motion be and the same is hereby denied. An

exception to the ruling of the Court is duly entered on behalf of the defendant.

The defendant's motion in arrest of judgment is now heard, and the same is by the Court ORDERED denied. An exception to said ruling of the Court is duly entered for the defendant. [42]

Regular October, 1923, Term, at Phoenix.

In the United States District Court in and for the District of Arizona.

Honorable F. C. JACOBS, United States District Judge, Presiding.

(Minute Entry of Saturday, February 16, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—FEBRUARY 16, 1924—
JUDGMENT.

The defendant, R. A. Aiton, is present in person and with counsel, W. J. Bailey, F. J. Duffy, and C. H. Young, Esqs., and is now duly informed by the Court of the nature of the crime charged in the first count of the indictment herein, to wit, unlawfully issuing prescriptions for morphine sulphate not in good faith and in the course of his profes-

sional practice only, in violation of Section 1, Act of Dec. 17, 1914, as amended by the Act of February 24, 1919; of his trial and conviction thereof by jury.

And no legal cause appearing why judgment should not now be imposed, the Court renders judgment as follows:

That the said defendant having been duly convicted of said crime, the Court now finds him guilty thereof, and does

ORDER, ADJUDGE AND DECREE that as a punishment therefor, he, the said R. A. Aiton, shall be imprisoned for the term of Two (2) years in the United States Penitentiary at Leavenworth, Kansas, said term to date from date of his delivery to the Warden of the aforesaid penitentiary. [43]

In the District Court of the United States in and
for the District of Arizona.

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

ORDER FOR WRIT OF ERROR AND BOND
ON APPEAL.

Now, on this 16th day of February, 1924, comes R. A. Aiton, defendant in the above-entitled cause, and presents to the Court his petition for a writ of

error from the United States District Court of the District of Arizona and certain assignments of error attached to said petition and moves the Court to grant the prayer of said petition and to allow a writ of error as prayed for.

IT IS ORDERED by the Court that said writ of error be and it is hereby allowed and that said writ of error shall operate as a supersedeas and that no further proceedings shall be had in this cause in this court until the final determination thereof in the United States Circuit Court of Appeals in and for the Ninth Circuit upon the filing and the approval by the Court of a bond in the penal sum of Five Thousand Dollars (\$5,000.00) with sureties thereon.

F. C. JACOBS,
United States District Judge, District of Arizona.

[Endorsed]: Filed Feb. 16, 1924. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. [44]

In the District Court of the United States in and
for the District of Arizona.

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

APPEARANCE BOND ON WRIT OF ERROR.

That we, R. A. Aiton, as principal, and E. W. Taylor, of Phoenix, Arizona, and L. B. Stephens, of Phoenix, Arizona, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars (\$5,000.00), to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of February, in the year of our Lord one thousand nine hundred and twenty-four.

WHEREAS, lately at the October term, A. D. 1923, of the District Court of the United States for the District of Arizona, in a suit pending in said court between the United States of America, plaintiff, and R. A. Aiton, defendant, a judgment and sentence was rendered against the said R. A. Aiton, and the said R. A. Aiton has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit, to reserve the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America [45] to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, California, thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such that if the said R. A. Aiton shall appear in the

United States Circuit Court of Appeals for the Ninth Circuit at the next regular term thereof and from day to day thereafter during said term, and from term to term, and from time to time, until finally discharged therefrom, and shall abide and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said District Court against him shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; else to remain in full force, virtue and effect.

R. A. AITON.

E. W. TAYLOR.

L. B. STEPHENS.

State of Arizona,
County of Maricopa,—ss.

E. W. Taylor and L. B. Stephens, the sureties in the within undertaking, being duly sworn, each for himself and not one for the other, says that he is worth the sum of Five Thousand Dollars (\$5,000.00) over and above all his just debts and liabilities, and over and above all property [46] exempt by law from execution and forced sale, and that he is a resident freeholder within the State of Arizona.

E. W. TAYLOR.

L. B. STEPHENS.

Subscribed and sworn to before me this 16th day
of February, 1924.

[Notarial Seal]

D. A. LITTLE,
Notary Public.

My commission expires December 31, 1924.

Approved.

F. C. JACOBS,
Judge of the United States District Court, in and
for the District of Arizona.

[Endorsed]: Deft. having been surrendered into
custody in open court July 11, 1924, by the sureties
on the within bond and requested that they be ex-
onerated from liability thereon, IT IS HEREBY
ORDERED that said bond and the sureties thereon
be and they hereby are exonerated and discharged
from any further liability and said bond exoner-
ated.

Dated July 11, 1924.

F. C. JACOBS,
U. S. Dist. Judge.

[Endorsed]: Filed Feb. 16, 1924. C. R. Mc-
Fall, Clerk. By Paul Dickason, Chief Deputy
Clerk. [47]

Regular October, 1923, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Thursday, February 21st, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,
Plaintiff,

vs.

R. A. AITON,
Defendant.

MINUTES OF COURT—FEBRUARY 21, 1924—
ORDER EXTENDING TIME TO FILE
BILL OF EXCEPTIONS.

IT IS HEREBY ORDERED BY THE COURT
that the defendant, R. A. Aiton, is allowed thirty
(30) days from the 4th day of February, 1924, in
which to prepare and file and cause to be settled
this bill of exceptions herein.

On motion of the United States Attorney, an ex-
ception to the Court's ruling is duly entered on
behalf of the United States. [48]

Regular October, 1923, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Saturday, March 1st, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—MARCH 1, 1924—OR-
DER EXTENDING TIME TO AND IN-
CLUDING MARCH 18, 1924, TO FILE BILL
OF EXCEPTIONS.

IT IS HEREBY ORDERED that the time is
extended to and including March 18, 1924, for the
defendant to prepare and file his bill of exceptions
herein. It is ordered that an exception is saved
to the Government. [49]

Regular October, 1923, Term, at Phoenix.

In the United States District Court, in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Monday, March 17th, 1924.)

No. C—1462 (PHOENIX).

UNITED STATES OF AMERICA,
Plaintiff,

vs.

R. A. AITON,
Defendant.

MINUTES OF COURT—MARCH 17, 1924—
ORDER EXTENDING TIME TO FILE BILL
OF EXCEPTIONS.

IT IS ORDERED that the time that the defend-
ant may have in which to prepare, serve and file
his bill of exceptions in this case is hereby extended
for five (5) days from the 17th day of March, 1924.

An exception on behalf of the Government is
duly entered. [50]

Regular October, 1923, Term, at Phoenix.

In the United States District Court, in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Friday, March 21st, 1924.)

No. C—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—MARCH 21, 1924—
ORDER EXTENDING TIME TO FILE BILL
OF EXCEPTIONS.

W. J. Bailey, Esq., is present for the defendant,
and on motion of said counsel,—

IT IS ORDERED that the time to prepare, serve
and file defendant's bill of exceptions herein be
and the same is hereby extended one week from the
22d day of March, 1924.

An exception is noted on behalf of the Govern-
ment. [51]

Regular October, 1923, Term, at Phoenix.

In the United States District Court, in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Saturday, March 29, 1924.)

No. C—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—MARCH 29, 1924—
ORDER EXTENDING TIME TO FILE BILL
OF EXCEPTIONS.

W. J. Bailey, Esq., is present on behalf of the de-
fendant, and on motion of said counsel,—

IT IS ORDERED that the time that defendant
may have in which to prepare, serve and file his
bill of exceptions herein is hereby extended eleven
(11) days from this date.

An exception is entered for the Government.

[52]

In the District Court of the United States, District
of Arizona.

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that the above-entitled cause came on for trial on the 14th day of January, 1924, being one of the days of the October term of said court, before the Honorable Fred C. Jacobs, one of the Judges of the United States District Court of the United States of America, District of Arizona, and a jury duly impanelled.

GEO. T. WILSON, Assistant U. S. Attorney, Appeared as Counsel for the Government.

WELDON J. BAILEY and BENTON DICK, Appeared as Counsel for the Defendant. [53]

I.

The Government introduced in evidence many prescriptions for narcotic drugs admittedly written by the defendant and filled for and used by patients of defendant, which said patients defendant testified were suffering from chronic or incurable disease; that the said prescriptions were written, filled and used prior to the date of the indictment upon which the defendant was tried.

That over the objection of the defendant, the Court admitted many prescriptions for narcotic drugs admittedly written by the defendant and bearing dates from one to two months subsequent to the date of the arrest of defendant; that said prescriptions were introduced by Government to rebut defendant's testimony that when informed of his violation of law by his arrest said defendant did not write any more prescriptions.

To the introduction of the said prescriptions defendant then and there duly objected upon the grounds that said prescriptions were immaterial, incompetent and irrelevant, and because proof of a criminal act after the alleged crime does not show intent to commit a prior crime, and said objection being overruled by the Court, defendant then and there excepted to said ruling and still excepts.

II.

The United States Attorney, during the trial of the cause propounded several questions, to which questions counsel for the defendant then and there duly objected and were sustained; that the Court came to the assistance of the United States Attorney and framed the questions objected to for him and permitted said questions so framed by the Court to be asked by the United States Attorney and answered by the witnesses over the objection of counsel for the defendant, to which ruling the defendant by his counsel then and there duly excepted, the ground of objection being that the interference of the Court prejudiced the rights of the defendant

unduly and not warranted by the evidence or the circumstances. [54]

III.

That defendant offered to show by Dr. Carson and other witnesses that after a conference held by such witnesses for the purpose of considering what was best to be done to control and regulate the use of narcotic drugs in Phoenix, they concluded that the known addicts should be referred to one doctor and kept under his care and treatment.

Defendant offered to show further that Mr. F. P. Barnes, local Narcotic Agent at that time and subsequent thereto, directed many addicts to the defendant and requested said defendant to treat said addicts and to prescribe narcotics for them and that pursuant thereto said defendant did write a large number of the prescriptions for narcotic drugs offered in evidence by the Government.

To the aforesaid offers by the defendant, the Government duly objected, which said objection was sustained by the Court and defendant then and there duly excepted and still excepts.

IV.

Dr. Carson, a witness for the defendant, upon cross-examination by the United States Attorney was answering a question propounded to him by the United States Attorney and in his answer attempted to explain the creation and maintenance of a clinic for the care and treatment of drug addicts who had been referred to the clinic and who were known to be suffering from chronic or incurable diseases and while the witness was so testifying,

the Court, in the absence of any objection by either side, interfered and admonished the witness not to testify to the establishment or maintenance of any clinic for said purpose, to which said interference and conduct by the Court defendant then and there objected upon the grounds that the prescriptions given by defendant to drug addicts pursuant to the clinic, established defendant's good intention, and that the interference by the Court prejudiced the jury against the defendant, and being overruled the defendant then and there excepted and still excepts. [55]

V.

Defendant offered to show that the narcotic drug prescriptions written by defendant and introduced in evidence by the Government had been inspected by a certain Narcotic Agent of the Federal Government after they had been filled and while in the hands of the druggist who filled same, and that said Narcotic Agent had endorsed thereon his approval and O. K. of said prescriptions; that said approval or O. K. of said narcotics was offered for the purpose of showing that defendant did not wilfully, knowingly and feloniously illegally prescribe narcotic drugs for drug addicts and for the purpose of showing the good intention in the course of the professional practice of the defendant. The offer being objected to by the Government and the objection sustained by the Court, defendant then and there excepted and still excepts.

VI.

Defendant offered to show that many of the pre-

scriptions introduced in evidence by the Government were written by defendant under and pursuant to a clinic created by certain parties for the purpose of guarding and guaranteeing the lawful use of narcotic drugs administered to those suffering from chronic or incurable diseases. To said offer the Government then and there objected and said objection being sustained by the Court, the defendant then and there duly excepted and still excepts.

VII.

That during the course of the trial the Court announced that the rulings laid down by the Supreme Court of the United States in the case of the United States vs. Webb and the United States vs. Jin Fuey Moy would be applied in this trial, and said statements by the Court and in the presence of the jury had the effect of prejudicing the jury against the defendant because the rulings of the Court in this cause were not founded upon facts then submitted or thereafter submitted during the course of the trial, [56] to which statements and ruling the defendant duly objected and being overruled by the Court duly excepted and still excepts.

VIII.

Counsel for the defendant then and there and before the jury retired requested the Court to charge the jury as follows:

“You are instructed that a reputable physician duly in charge of *bona fide* patients suffering from diseases known to be incurable, such as cancer, advanced tuberculosis and many

other diseases, may in the course of his professional practice and strictly for legitimate medical purposes, dispense or prescribe narcotics for such diseases, providing the patients are personally attended by the physician; that he regulates the dosage and that he prescribe no quantity greater than that usually given by members of his profession and known to be sufficient for the purpose.

“You are further instructed that if you find upon all the facts stated above that the defendant prescribed narcotics as stated, you must find him not guilty of a violation of the Harrison Narcotic Act.”

The defendant by his counsel then and there and before the jury retired excepted to the ruling of the Court in failing to charge the jury as above requested by the defendant.

Whereupon the jury retired and brought in a verdict finding the defendant guilty upon the first count only of the indictment.

IX.

Thereupon defendant moved the Court to set aside the verdict and grant a new trial to defendant, said motion being overruled by the Court, defendant then and there excepted and still excepts.

X.

Whereupon the Court entered judgment upon the verdict and sentenced the defendant to two years in the Federal Penitentiary to which ruling and judgment of the Court the defendant then and there duly excepted and still excepts.

This is to certify that the foregoing bill of exceptions tendered by the defendant is correct in every particular, and [57] it is hereby settled and allowed and made a part of the record of this cause.

Done in open court this 28th day of May, A. D. 1924.

F. C. JACOBS,
U. S. District Judge.

[Endorsed]: Bill of Exceptions. Filed May 28, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk. [58]

Regular April, 1924, Term, at Phoenix.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Wednesday, May 28th, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—MAY 28, 1924—ORDER
SETTLING AND ALLOWING BILL OF
EXCEPTIONS.

IT IS ORDERED BY THE COURT that defendant's bill of exceptions filed herein be and the same is hereby settled and allowed. [59]

Regular March, 1924, Term, at Prescott.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Friday, July 11, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—JULY 11, 1924—OR-
DER RE SUPERSEDEAS BOND.

The defendant, R. A. Aiton, is present in person with his counsel, Benton Dick, Esquire.

The bondsmen of the defendant now formally tender in open court the defendant to the custody of the Court and request that they be exonerated

as sureties on the bond of said defendant, R. A. Aiton.

IT IS THEREUPON ORDERED that the present supersedeas bond on file stand in full force and effect until the Court satisfies itself as to its jurisdiction in the matter of the exoneration of said bondsmen, the case of said defendant Aiton now being on appeal to the Circuit Court of Appeals for the Ninth Circuit. [60]

Regular March, 1924, Term, at Prescott.

In the United States District Court in and for the
District of Arizona.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

(Minute Entry of Friday, July 11, 1924.)

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

MINUTES OF COURT—JULY 11, 1924—OR-
DER EXONERATING SURETIES ON
SUPERSEDEAS BOND.

The sureties on the defendant's supersedeas bond herein having surrendered the defendant R. A. Aiton in open court and moved the Court that said

bond be exonerated and that they and each of them be released from liability thereon, and the Court having granted said motion and ordered said defendant in custody of the United States Marshal, and defendant having immediately furnished a good and sufficient supersedeas bond which has been approved by the Judge of this court,—

IT IS HEREBY ORDERED that the said defendant, R. A. Aiton, be discharged from custody pending his appeal on the judgment herein. [61]

In the United States District Court, District of
Arizona.

No. C.—1462—PHOENIX.

THE UNITED STATES OF AMERICA

vs.

R. A. AITON,

Defendant.

PRAECIPE FOR PAPERS AND RECORD ON
WRIT OF ERROR TO UNITED STATES
CIRCUIT COURT OF APPEALS.

To the Clerk of the United States District Court,
District of Arizona:

Notice is hereby given that R. A. Aiton, the defendant and plaintiff in error herein, specifies the following papers and portions of the record in the above-entitled cause which he deems necessary and proper to present the questions involved in the hearing on writ of error, and respectfully request that

you transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit the following papers and portions of the record:

1. Original indictment.
2. Demurrer to indictment.
3. Order overruling demurrer to indictment.
4. Minute entry of defendant's plea to indictment.
5. Defendant's motion to suppress evidence.
6. Order denying defendant's motion to suppress evidence.
7. Amended demurrer.
8. Order overruling defendant's amended demurrer and notation of exception.
9. Motion for new trial.
10. Order denying defendant's motion for new trial and exception.
11. Motion in arrest of judgment.
12. Order denying defendant's motion in arrest of judgment and exception.
13. Judgment.
14. Order allowing writ of error to U. S. Circuit Court of Appeals.
15. Order (Feb. 21, 1924) allowing defendant 30 days from 4th day of February to prepare and file bill of exceptions. [62]
16. Order (Mch. 1, 1924) extending time to prepare and file bill of exceptions to March 18th.
17. Order (Mch. 17) extending time five days from Mch. 17, 1924, to prepare and file defendant's bill of exceptions.

18. Order (Mch. 29, 1924) extending time to prepare and file bill of exceptions one week.
19. Bill of exceptions filed May 28, 1924.
20. Order settling and allowing defendant's bill of exceptions, dated May 28th, 1924.
21. Original appearance bond on writ of error to U. S. Circuit Court of Appeals.
22. Order granting motion to release sureties on original appearance bond on writ of error.
23. Order (July 11, 1924) approving new appearance bond on writ of error to U. S. Circuit Court of Appeals, and discharging defendant pending appeal.
24. Assignment of errors filed February 16, 1924.
25. Petition of defendant for writ of error.
26. Citation for writ of error.
27. Affidavit of John H. Easterwood, filed Feby. 16, 1924.
28. Points and authorities filed by defendant Feby. 12, 1924.
29. Instructions requested by defendant and refused by Court.
30. Verdict of jury filed January 24, 1924.
31. Resistance to motion for new trial and motion to arrest judgment and affidavit of George Warner, Exhibit "A."
32. Motion (October 30, '23) for order directing U. S. Attorney not to use any of prescriptions alleged to have been written by defendant and affidavit of defendant.

33. This notice.

BENTON DICK,

Attorney for Plaintiff in Error.

Dated this 25th day of July, 1924.

[Endorsed]: Praecipe for Record and Papers on Writ of Error to U. S. Circuit Court of Appeals. Filed July 25, 1924. C. R. McFall, Clerk. By M. R. Malcolm, Deputy Clerk.

Also: Service of copy ack. this 25th day of July, 1924. Geo. T. Wilson, (May), Asst. U. S. Attorney.

[63]

In the District Court of the United States, in and
for the District of Arizona.

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

WRIT OF ERROR.

The President of the United States to the Honorable
Judge of the United States District Court for
the District of Arizona, GREETING:

Because in the records and proceedings,
as also in the rendition of the judgment, of a
plea which is in the aforesaid District Court
before you, between the United States of America,

plaintiff, and R. A. Aiton, defendant, manifest error has happened to the great damage of the said defendant, as by his complaint and assignment of errors appears, we being willing that error, if any there has been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, in said Circuit, within thirty (30) days from the date of this writ, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States Supreme Court, this 2d day of August, in the year of our Lord one thousand nine hundred twenty-four.

[Seal]

C. R. McFALL,
Clerk.

[Endorsed]: Filed Aug. 2, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy. [64]

RETURN ON WRIT OF ERROR.

The Answer of the Judge of the District Court of the United States for the District of Arizona, to the within writ of error:

As within commanded, I certify under the seal of my said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

By the Court:

[Seal]

C. R. McFALL,
Clerk.

By Paul Dickason,
Chief Deputy Clerk.

In the District Court of the United States in and
for the District of Arizona.

No. C.—1462 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

CITATION ON WRIT OF ERROR.

The President of the United States to the Honorable FREDERIC H. BERNARD, United States Attorney for the District of Arizona,
GREETING:

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, California, in said Circuit, within thirty (30) days from the date hereof, pursuant to the writ of error filed in the Clerk's office of the District Court of the United States for the District of Arizona, wherein R. A. Aiton is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable F. C. JACOBS, Judge of the United States District Court for the District of Arizona, this 2d day of August, A. D. 1924.

F. C. JACOBS,

United States District Judge.

The foregoing citation received Aug. 2d, 1924.

GEO. T. WILSON,

Asst. U. S. Atty.

[Endorsed]: Filed Aug. 2, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy. [65]

In the District Court of the United States in and
for the District of Arizona.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

R. A. AITON,

Defendant.

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the United States for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said United States District Court for the District of Arizona, including the records, papers and files in the case of United States of America, Plaintiff, versus R. A. Aiton, Defendant, said case being numbered Criminal 1462 on the docket of the Phoenix Division of said court.

I further certify that the foregoing 65 pages, numbered from 1 to 65, inclusive, constitute a full, true and correct copy of the record, and of the assignment of errors and all proceedings in the above-entitled cause, as the same appears from the originals of record and on file in my office as such Clerk.

And I further certify that there are also annexed to said transcript the original writ of error and the original citation on writ of error issued in said cause.

And I further certify that the cost of preparing and certifying to said record, amounting to Thirty and 50/100 Dollars (\$30.50), has been paid to me by the above-named defendant (plaintiff in error).

WITNESS my hand and the seal of said court, this 21st day of August, 1924.

[Seal]

C. R. McFALL,
Clerk of the United States District Court for the
District of Arizona.

By Paul Dickason,
Chief Deputy Clerk. [66]

[Endorsed]: No. 4357. United States Circuit Court of Appeals for the Ninth Circuit. R. A. Aiton, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Received August 23, 1924.

F. D. MONCKTON,
Clerk.

Filed October 11, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.